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## Responsibility for Mistakes in Application Made by Agents of Insurance Company

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## RESPONSIBILITY FOR MISTAKES IN APPLICATION MADE BY AGENTS OF INSURANCE COMPANY

A typical problem in the field of insurance, and one which is constantly arising, involves the interesting question, to what extent an insurance company by an express limitation upon the agent's authority inserted in the application may escape liability for the fraudulent or accidental mistakes of such agent made while soliciting and preparing applications for insurance? An applicant for insurance truthfully answers all questions propounded by the soliciting agent or medical examiner but untrue answers are inserted in the application by such agents. The applicant signs the application without reading and without knowledge of the falsity of any of the answers. In an action by the beneficiary to recover on the insurance policy the insurance company defends on the ground of a material misrepresentation in the application. In the absence of any restrictions or limitations upon the agent's authority, the law is well established that information correctly communicated to the agent will be imputed to the principal and the company will be estopped to set up the defense of misrepresentation.<sup>1</sup> As one court stated, "The business of insurance being transacted almost exclusively by agents the maxim, *qui facit per alium facit per se*, applies with peculiar force to their acts."<sup>2</sup> It is only natural that insurance companies have constantly sought some device by which to escape the burden of this rule. One of the first means invented was the insertion of a provision in the application or policy that the agent in preparing the application was to be regarded as the agent of the insured and not as agent of the company. These provisions were promptly declared invalid by the courts as being contrary to fact and a mere attempt to create an agency which never existed.<sup>3</sup> While such sweeping provisions are no longer in use in the insurance policy, the companies have attempted to offset the general rule by a partial limitation on the agent's authority, inserting in the application a statement to the effect that,

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<sup>1</sup> The cases upholding this view are collected in Note (1932) 81 A. L. R. 833. <sup>2</sup> Aetna Live Stock F. & T. Ins. Co. v. Olmstead, 21 Mich. 246 (1870).

<sup>3</sup> Deitz v. Insurance Co., 31 W. Va. 851, 8 S. E. 816 (1888); Coles v. Jefferson Insurance Company, 41 W. Va. 261, 23 S. E. 732 (1895); Pierce v. The People, 106 Ill. 11 (1883); In Kausal v. Minnesota Farmers' Ins. Co., 31 Minn. 17, 16 N. W. 430 (1883), the court in speaking of such a limitation states, "There is no magic in mere words to change the real into the unreal. A device of words cannot be imposed upon the court in the place of an actuality of fact."

## STUDENT NOTES

"The agent taking this application has no authority to make, modify, or discharge contracts or waive any of the company's rights or requirements, and the company shall not be charged with knowledge on the part of the medical agents or other representative of any information called for by any question contained in this application unless made a part hereof or indorsed hereon."

Although a similar provision is almost universally adopted by the insurance companies there is by no means unanimity among the courts whether this limitation will be upheld.<sup>4</sup> In the federal courts and almost half the states the rule is that such a limitation is valid and will be binding on the applicant who signs the application.<sup>5</sup> This rule, commonly known as the federal rule, is believed to have had its origin in the Connecticut case of *Ryan v. World Life Insurance Company*<sup>6</sup> which was cited with approval in the first federal case upholding the limitation.<sup>7</sup> In the *Fletcher* case, which is probably the leading case on the subject, Justice Field stated the rule in these words:

"Here the power of the agent was limited and notice of such limitation given by being embodied in the application, which the assured was required to make and sign, and which, as we have stated, he must be presumed to have read. He is therefore bound by his statements."

Despite the great weight to which the *Fletcher* case and other cases so holding are entitled, it is believed that the federal rule is fallacious in that it ignores the true nature of the insurance contract. Under this view the applicant and the insurer are treated

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<sup>4</sup> Mr. Vance in his text, *VANCE, INSURANCE* (2d ed. 1930), states the overwhelming weight of American authority to be that such limitations are invalid. At one time this statement correctly stated the rule for only the federal courts and a very few state courts permitted such limitations. However, it is submitted that the trend of recent decisions is in favor of such limitations and the courts at present time are almost evenly divided upon the question. For a comprehensive collection of the cases see note in (1931) 81 A. L. R. 333. Also see Note (1924) 18 ILL. L. REV. 377.

<sup>5</sup> *New York Life Ins. Co. v. Fletcher*, 117 U. S. 519 (1886); *Mutual Life Ins. Co. v. Lambert*, 34 F. (2d) 215 (W. D. Missouri, 1929); *Shamblen v. Modern Woodmen*, 105 W. Va. 252, 142 S. E. 447 (1928); *Dimick v. Metropolitan Life Ins. Co.*, 69 N. J. L. 384, 55 Atl. 291 (1903); *Forwood v. Prudential Ins. Co.*, 117 Md. 254, 83 Atl. 169 (1912); *Minsker v. John Hancock Life Ins. Co.*, 254 N. Y. 333, 173 N. E. 4 (1930); *Koppleman v. Commercial Casualty Co.*, 302 Pa. 106, 153 Atl. 121 (1930); *Salvate v. Fireman's Ins. Co.*, 42 R. I. 433, 108 Atl. 579 (1920); *Ryan v. World Ins. Co.*, 41 Conn. 168 (1874); *New York Life Ins. Co. v. Patten*, 151 Ga. 185, 106 S. E. 183 (1920); *Iverson v. Metropolitan Ins. Co.*, 151 Cal. 746, 91 Pac. 609 (1907).

<sup>6</sup> 41 Conn. 168 (1874).

<sup>7</sup> *New York Life Ins. Co. v. Fletcher*, 117 U. S. 519 (1886).

as though negotiating an ordinary bargain and sale. The parties are regarded as being capable of making any restrictions and imposing any limitations which they may see fit. The applicant is charged with notice of the limitations on the agent's authority and is held to be under a duty to read the application.<sup>8</sup> Failure to read the application and to discover the fraud or mistake places the applicant in the position of being a party to the fraud.<sup>9</sup> To summarize the situation, at every step of the way the applicant is held vigorously to the rule, "*Vigilantibus et non domientibus jura subveniunt.*"<sup>10</sup>

Almost diametrically opposed to these decisions is the rule which prevails in a majority of the state courts and which holds such limitations to be of no effect.<sup>11</sup> Courts adopting this view have taken a more realistic approach to the problem and have tended to look at the true conditions which surround the formation of the insurance contract. The courts recognize that insurance companies have sent out their agents to solicit insurance from people who have little understanding of the subject of insurance and the rules which govern its negotiation. Applicants for insurance are generally clear on one or two points which the agent promises to protect, but for everything else they must sign ready-made applications and accept ready-made policies, carefully concocted to conserve the interests of the company. The agent in preparing the application negotiates for the company, asks questions for the company, and makes returns for the company. The average applicant for insurance regards the signing of the application as a mere matter of form and relies upon the agent's superior knowledge con-

<sup>8</sup> *Dimick v. Metropolitan Life Ins. Co.*, 69 N. J. L. 384, 55 Atl. 291 (1903); *Rinker v. Aetna Life Ins. Co.*, 214 Pa. 608, 64 Atl. 82 (1906); *Koppleman v. Ins. Co.*, 302 Pa. 106, 153 Atl. 121 (1930); *Globe Life Ins. Co. v. Duffy*, 76 Md. 293, 25 Atl. 227 (1892); *Forwood v. Prudential Ins. Co.*, 117 Md. 254, 83 Atl. 169 (1912).

<sup>9</sup> *Supra* n. 8.

<sup>10</sup> *Pflester v. Missouri State Life Ins. Co.*, 85 Kan. 97, 116 Pac. 245 (1911).

<sup>11</sup> *Howe v. Provident Fund Soc.*, 7 Ind. App. 583, 34 N. E. 830 (1893); *Nat. Life Ins. Co. v. Grady*, 185 N. C. 384, 117 S. E. 289 (1923); *Schuler v. Mutual Ins. Co.*, 191 Mo. App. 52, 176 S. W. 274 (1915); *Pacific Mutual Life Ins. Co. v. Van Fleet*, 47 Colo. 401, 107 Pac. 1087 (1910); *Parno v. Iowa Merchants' Ins. Co.*, 114 Iowa 132, 86 N. W. 210 (1901); *Royal Neighbors of America v. Boman*, 177 Ill. 27, 52 N. E. 264 (1898); *Tubbs v. Dwelling-House Ins. Co.*, 84 Mich. 646, 48 N. W. 296 (1891); *Mutual Aid Union v. Blacknall*, 129 Ark. 450, 196 S. W. 792 (1917); *Shinn v. National Travelers Benefit Ass'n*, 102 Kan. 134, 169 Pac. 215 (1917); *Federal Life Ins. Co. v. Whitehead*, 73 Okla. 71, 174 Pac. 784 (1918); *Sternaman v. Metropolitan Life Ins. Co.*, 170 N. Y. 13, 62 N. E. 763 (1902), overruled in *Minsker v. John Hancock Life Ins. Co.*, 254 N. Y. 333, 173 N. E. 4 (1930).

cerning all matters mentioned therein. Under such circumstances it is not carelessness or imprudence for the applicant to assume that the agent will accurately and truthfully set down the results of the negotiations.<sup>12</sup> Under this view of the insurance contract, courts reach the conclusion that the whole subject is to be regarded as *sui generis* and the rules governing the formation of ordinary contracts are held not to apply. Whether the agent acts for the company and whether his acts and knowledge will bind the company are to be determined by settled legal principles rather than by stipulations contained in the application.<sup>13</sup> Being more in accord with the facts this view for that reason reaches a more desirable result.

The law in West Virginia upon this issue is apparently well settled. Our court holds in accordance with the majority view that in the absence of any limitation upon the agent's authority his knowledge and his acts committed within the apparent scope of his authority are binding upon the company.<sup>14</sup> Likewise, any limitation on the agent's authority contained in the policy or in the company's by-laws is held invalid in so far as it relates to matters arising prior to the inception of the insurance contract.<sup>15</sup> In the case of *Shamblin v. Modern Woodmen*,<sup>16</sup> however, the court definitely declares that any limitation on the agent's authority inserted in the application will be valid and binding upon the applicant. In the case of *Dickinson v. Pacific Insurance Company*,<sup>17</sup> the most recent decision on this point, the applicant relied upon the advice of the company's medical agent that a past illness was so trivial that it need not be mentioned in the application. The application contained a provision that the agent could not bind the company by his knowledge unless such were made a part of the application. Although the point arose only by way of dictum, the West Virginia court is apparently undecided as to how far the rule of the *Shamblin* case should apply to this situation. It is submitted that in such a case the rule of the *Shamblin* case should be limited. The court might well draw a distinction between a

<sup>12</sup> *Royal Neighbors of America v. Boman*, 177 Ill. 27, 52 N. E. 264 (1888).

<sup>13</sup> *Supra* n. 11.

<sup>14</sup> *McCall v. Phoenix Mut. Ins. Co.*, 9 W. Va. 237 (1876); *Schwarzbach v. Protective Union*, 25 W. Va. 622 (1885); *Shinn v. Insurance Co.*, 104 W. Va. 353, 140 S. E. 61 (1927).

<sup>15</sup> *Deitz v. Insurance Co.*, 31 W. Va. 851, 8 S. E. 816 (1888); *Medley v. Insurance Co.*, 55 W. Va. 342, 47 S. E. 101 (1904).

<sup>16</sup> 105 W. Va. 252, 142 S. E. 447 (1928).

<sup>17</sup> 188 S. E. 378 (W. Va. 1936).

limitation imposed upon the authority of an ordinary agent and that imposed upon the authority of the medical agent. Such a distinction has been pointed out by other courts<sup>18</sup> and, far from being nebulous, is well founded in fact. An applicant for insurance may refuse to rely upon an ordinary agent of the company and may fill out his own application or may seek help from others in doing so. But in the case of the medical examiner, the company very properly insists on the right to select the agent, and the applicant has no choice. Further, the medical examination and the answering of the medical questions often involves a degree of professional skill and knowledge which only the medical agent possesses. Under these circumstances it would not seem an undue hardship upon the company to insist that the applicant have the right despite all limitations in the application to rely upon the statements and opinion of the medical examiner.

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<sup>18</sup> In *Sternaman v. Metropolitan Life Ins. Co.*, 170 N. Y. 13, 62 N. E. 763 (1902), the distinction between a medical agent and the ordinary soliciting agent is clearly pointed out. See also *Dimick v. Metropolitan Life Ins. Co.*, 75 N. J. L. 822, 69 Atl. 176 (1903); *Mutual Benefit Life Ins. Co. v. Robison*, 58 Fed. 723 (C. C. A. 8th, 1893).